**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**THURSDAY, THE 20TH SEPTEMBER 2007 / 29TH BHADRA 1929**

**WP(C).No. 26110 of 2007(G)**

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**PETITIONER:**

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**PADMANABHAN K.T.,**
**S/O.LATE VELAYUDHAN, AGED 51 YEARS,**
**SREEPADAM, THENNANCHERIPOYIL HOUSE,**
**MELUR POST, KOYILANDY, KOZHIKODE DISTRICT.**

**BY ADV. SRI.VINOD SINGH CHERIYAN**
**SRI.V.T.MADHAVANUNNI**
**SRI.R.SUDHISH**
**SRI.V.A.SATHEESH**

**RESPONDENTS:**

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**1. THE KERALA STATE CO-OPERATIVE BANK LTD., REPRESENTED BY THE PRESIDENT, COBANK TOWERS, PALAYAM, THIRUVANANTHAPURAM-695 033**

**2. THE DEPUTY GENERAL MANAGER (AUTHORISED OFFICER), THE KERALA STATE CO-OPERATIVE BANK LTD., KOZHIKODE REGIONAL OFFICE, COLOMB TOWERS, M.M.ALI ROAD, KOZHIKODE - 673 002.**

**BY ADV. SRI.NAGARAJ NARAYANAN,SC,K.S.CO-OP BANK**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

**K.M.JOSEPH, J.**

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WP.(C) No. 26110 of 2007

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Dated this the 20th day of September, 2007

**JUDGMENT**

Petitioner availed a loan. It was not repaid fully. Petitioner challenges the proceedings instituted under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

2. I heard learned counsel for the petitioner and the learned counsel for the Bank.

3. Learned counsel for the petitioner raised two contentions. Firstly he contends that proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act are unwarranted. This is for the reason that it is not open to a Co-operative Bank to avail of the provisions of the Act as it is only a Co-operative Bank. He referred to me the decision of the Apex Court reported in **Greater Bombay Co-operative Bank Ltd. v. M/s. United Yarn Tex. Pvt. Ltd.** (JT 2007(5) SC 201). Therein the Apex Court in fact pointedly considered the case arising under the Debt

Recovery Act. While considering the same, it also referred to the Securitisation Act.

4. As far as the proceedings under the Securitisation Act are concerned, it is open to a secured creditor to take steps under Section 13 of the Act. Secured Creditor is inter alia defined as any bank or financial institution or any consortium or group of banks or financial institutions. Bank is defined in Clause (c). Sub Clause (v) reads as follows:

> "such other bank which the Central Government may, by notification, specify for the purposes of this Act."

The Apex Court was considering the case essentially as to whether a Co-operative Bank will fall within the four corners of the definition of the word Banking Company. In fact the Apex Court has proceeded to observe that there is a notification issued under Section 2(c) of the Securitisation Act, by which Co-operative Banks are also notified as a Bank. If that be so, a Co-operative Bank would also fall within the definition of the word 'secured creditor'. If it becomes a secured creditor, it would be open to the respondent Bank to avail of the

provisions of the Securitisation Act. It is also pointed out by the learned counsel for the Bank that the Bank in question is a State Co-operative Bank included in the schedule of the Reserve Bank of India Act. In such circumstances in the light of the fact that there is a notification under which it is included as a Bank within the meaning of Clause 2(c) and a distinction is apparently drawn between the term Bank and Banking Company, and though a Co-operative Bank will not come within the ambit of the word Banking Company, in view of the notification issued under Clause 2(c) it would come within the four corners of the definition of the word Bank. Therefore I am not inclined to accept the contention raised by the petitioner in this regard.

5. As regards the second contention, learned counsel for the petitioner would point that the respondent is not entitled to avail of the benefit in view of the fact that security agreement between the petitioner and respondent No.1 requires a registration so as to make it a legally valid and enforceable mortgage. According to the respondents the mortgage in this case does not require registration. Learned counsel for the petitioner points out that it is a case where the mortgage

is created at the time when the loan documents were created and it requires registration. This is essentially a matter where I feel that the petitioner is to be relegated to the pursuit of the remedy under Section 69.

In such circumstances, while I reject the contention of the petitioner based on the fact that the respondent as a Co-operative Bank cannot invoke the Securitisation Act in regard to the contention based on there not being a registered document, the petitioner is relegated to pursue the remedy of approaching the appropriate forum.

The writ petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

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